



**MCI Telecommunications  
Corporation**

1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

ORIGINAL

November 13, 1995

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U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

**Re: Southwestern Bell Telephone Company, Transmittal No. 2470,  
2489, Tariff F.C.C. No. 73, CC Docket No. 95-158**

Dear Mr. Caton:

Enclosed herewith for filing are the original and four (4) copies of MCI Telecommunications Opposition to Direct Case regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Opposition to Direct Case, furnished for such purpose and remit same to the bearer.

Sincerely yours,

Don Sussman  
Regulatory Analyst

Enclosure  
DHS

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of:

Southwestern Bell Telephone Company  
Tariff F.C.C. No. 73

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Transmittal No. 2470,  
2489, CC Docket No.  
95-158

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OPPOSITION TO DIRECT CASE

I. Introduction

MCI Telecommunications Corporation ("MCI"), pursuant to the Order Initiating Investigation released on October 13, 1995, hereby files its opposition to Southwestern Bell Telephone Company's ("SWBT's") Direct Case, which was filed October 27, 1995.<sup>1</sup> On June 16, 1995, SWBT filed Transmittal No. 2470, which proposed to provide an Individual Case Basis ("ICB") arrangement for one of its customers.<sup>2</sup> Upon review of the cost information submitted with SWBT Transmittal No. 2470, the Common Carrier Bureau ("Bureau") concluded that

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<sup>1</sup> In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Transmittal Nos. 2470, 2489, CC Docket No. 95-158 (Com. Car. Bur., released October 13, 1995) (DA 95-2156) ("Investigation Order").

<sup>2</sup> SWBT Transmittal No. 2470 proposes to provide 155 Mbps of protected bandwidth between 15201 W. 99 and 600 N. Industrial Parkway, Lenexa, Kansas, utilizing three Optical Carrier Level-3 ("OC-3") transport, for one of its customers.

significant issues concerning the sufficiency of the cost information filed on the record warrant an investigation into the lawfulness of Transmittal No. 2470, and suspended Transmittal 2470 for five months.<sup>3</sup> In its Direct Case, SWBT has failed to provide the Commission with any new evidence which demonstrates that the cost support submitted with Transmittal No. 2470 is sufficient to justify the proposed rates. The Commission should therefore dismiss SWBT's rhetoric, and declare SWBT Transmittal No. 2470 unlawful because it violates Section 61.38 of the Commission's rules.<sup>4</sup>

**II. SWBT Fails to Demonstrate That The Cost Information Filed in Transmittal No. 2470 Is Sufficient**

In the Investigation Order, the Commission requires SWBT to demonstrate in its Direct Case that the cost information that it submitted with Transmittal No. 2470 is sufficient to support the ICB service proposed therein under the Commission's rules and policies. In its Direct Case, SWBT contends that SWBT's Transmittal No. 2470 cost support is sufficient because 1) Section 61.38 of the Commission's rules do not apply to ICB filings;<sup>5</sup> 2) the Commission did not object to two ICB transmittals filed by SWBT in 1986 and 1988, which

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<sup>3</sup> Investigation Order at ¶¶8.

<sup>4</sup> 47 C.F.R. §61.38.

<sup>5</sup> SWBT Direct Case at 4.

purportedly had less cost support than that submitted in Transmittal No. 2470;<sup>6</sup> and 3) the customer of SWBT's ICB arrangement accepted the proposed rates.<sup>7</sup> In addition, SWBT's attempts to lend credence to its contention that it submitted sufficient cost support by relying on statements previously submitted by MCI, which SWBT has taken completely out of context, and by claiming that MCI's motive for seeking an investigation or rejection of Transmittal No. 2470 is to disadvantage one of MCI's competitors. All of SWBT's allegations are false.

First, Commission policy, dating back to the beginning of price caps,<sup>8</sup> has excluded ICB offerings from price cap regulation and required that ICB offerings comply with Section 61.38 of the Commission's rules. ICB tariffs that fail to comply with Section 61.38 of the Commission's rules have been rejected by the Bureau. Second, on its own initiative, the Bureau released a Public Notice on September 27, 1995 which clearly restated Commission policy on ICB tariff offerings.<sup>9</sup> Specifically, the Bureau restated that an ICB service offering is not unreasonably discriminatory so long as it, among other things, "provides cost support in accordance with the standards set forth in Section 61.38 of the

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<sup>6</sup> SWBT Direct Case at n. 1.

<sup>7</sup> SWBT Direct Case at 6.

<sup>8</sup> Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) ("LEC Price Cap Order").

<sup>9</sup> Public Notice, Common Carrier Bureau Restates Commission Policy On Individual Case Basis Tariff Offerings (DA 95-2053), released September 27, 1995 ("September 27 Public Notice").

Commission's rules."<sup>10</sup> Section 61.38 of the Commission's rules requires carriers filing ICB arrangements to provide a projection of costs for a representative 12 month period, and estimates of the effect of the new matter on the traffic and revenues from the service to which the new matter applies, and the carriers overall traffic revenues.<sup>11</sup> Furthermore, the rules require the carriers filing ICB arrangements to include "complete explanations of the bases for the estimates."<sup>12</sup> Clearly, SWBT's contention that Section 61.38 of the rules do not apply to ICB filings is wrong. The Bureau has restated that Commission policy requires carriers to provide cost support information in accordance with the standards set forth in Section 61.38 of the Commission's rules.

Third, SWBT's argument that two ICB filings went into effect with less cost support than that which has been submitted in support of Transmittal No. 2470 is completely irrelevant. In the Commission's September 27 Public Notice the Commission illustrated that Commission policy has required ICB filings to satisfy

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<sup>10</sup> September 27 Public Notice at 2. See, e.g., In the Matter of Bell Atlantic Telephone Companies Transmittal Nos. 224 and 226 Revisions to Tariff 1, 3, FCC Rcd 1621, 1622-23 (Com. Car. Bur. 1988) ("Bell Atlantic Transmittals Nos. 224 and 226"); In the Matter of BellSouth Telephone Companies Transmittal No. 346 Revisions to Tariff F.C.C. No. 4, 6 FCC Rcd 373, 374 (Com. Car. Bur. 1991) ("BellSouth Transmittal No. 346").

<sup>11</sup> 47 C.F.R. §61.38 (b).

<sup>12</sup> 47 C.F.R. §61.38 (b)(1).

cost showing under Section 61.38 of the Commission's rules as far back as

1988.<sup>13</sup> Specifically, the Bureau stated that:

carrier ICB offerings also must satisfy the cost showing required under Section 61.38 of the Commission's rules, 47 C.F.R. §61.38. In 1988 and 1991, the Bureau rejected ICB offerings based upon the carriers' failure to comply with this requirement.<sup>14</sup>

Fourth, SWBT's claim that the cost support is sufficient and that the rates are not excessive because "it is unlikely that the customer would have accepted the terms and conditions of the ICB if it thought the rates were excessive" is irrelevant. Section 61.38 of the Commission's rules require carriers offering ICBs to file cost support on the public record, available to all interested parties. Such a requirement allows interested parties to monitor the costs and rates of ICB arrangements between a LEC and its other customers. Such a requirement gives interested parties the ability to identify potentially discriminatory or otherwise unreasonable pricing, or more desirable service offerings, and either renegotiate similar contracts with the LEC, or bring it to the attention of the Bureau. As the second largest access customer of SWBT, MCI has a clear interest in ensuring that the rates that it is being charged for access are cost based. The only way to ensure that access costs are not unreasonably high for new services and for services excluded from price caps, is for the Commission to

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<sup>13</sup> September 27 Public Notice at 2.

<sup>14</sup> Id.

require monopoly local exchange carriers to support its proposed rates with public cost support.

Finally, SWBT asserts that MCI's interest in seeking a rejection or suspension of Transmittal No. 2470 lies in MCI's strategy to delay and disadvantage one of its competitors. MCI has no interest in using the regulatory process to game the competitive landscape. MCI's concern is that SWBT is once again attempting to circumvent the Commission's rules in order to strengthen its hold on its local monopoly. MCI pays 40 percent of every revenue dollar earned from telecommunications services to LECs for access to its customers. If the LECs are permitted to hide their costs from interested parties, including the Commission, access ratepayers will not be guaranteed reasonable rates, and competition will never develop in the local telecommunications marketplace.

In its Direct Case, SWBT attempts to paint a picture of MCI objecting to SWBT transmittals in attempt to disadvantage MCI's competitors, yet remaining silent when the transmittal is advantageous to MCI, regardless of the principles at stake. Such a picture is completely wrong. The Commission need only look at MCI's record in opposing SWBT's anticompetitive tactics to see that MCI's pro-competitive policy remains a consistent cornerstone of its public policy positions. Furthermore, no carrier, organization, or association has been more vocal in pointing out to the Commission instances, such as this, where LECs attempt to circumvent clearly defined, well-established Commission rules.

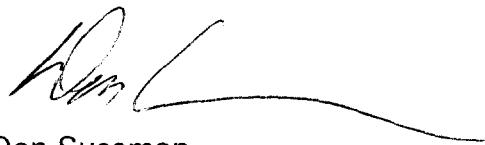
SWBT asserts that MCI has stated in a letter to the Commission that it believes SWBT "to be following the rules" when it comes to filing cost support. SWBT has once again taken MCI's comments completely out of context. As is evident from reading the entire MCI letter to the Commission which was referenced by SWBT (see attached), MCI opposed SWBT Transmittal No. 2448 because SWBT filed its cost support under confidential cover. On May 18, 1995, SWBT withdrew its request for confidential treatment. On May 19, 1995, MCI withdrew its opposition to Transmittal No. 2448 because SWBT no longer requested confidential treatment of its cost information, and therefore, no longer violate the Commission rules that require carriers to file cost information on the public record. SWBT's apparent need to mischaracterize MCI's specific comments illustrates the weakness of the arguments submitted in its Direct case.



### **III. Conclusion**

SWBT's Direct Case fails to demonstrate that it has filed sufficient cost information to support Transmittal No. 2470. Thus, for the above-mentioned reasons, the Commission should declare SWBT Transmittal No. 2470 unlawful.

Respectfully submitted,  
MCI TELECOMMUNICATIONS CORPORATION

A handwritten signature in black ink, appearing to read 'Don Sussman', with a long horizontal flourish extending to the right.

Don Sussman  
Regulatory Analyst  
1801 Pennsylvania Ave., NW  
Washington, D.C. 20006  
(202) 887-2779

November 13, 1995



MCI Telecommunications  
Corporation  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

May 19, 1995

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: In the Matter of Southwestern Bell Telephone Company Transmittal No. 2448, Tariff F.C.C. No. 73

Dear Mr. Caton:

On April 17, 1995, Southwestern Bell Telephone Company ("SWBT") requested proprietary treatment for the cost support associated with its Transmittal No. 2448. MCI Telecommunications Corporation ("MCI") opposed this transmittal because it was filed with the cost support withheld from public disclosure, which violated the Communications Act and the Commission's rules.

On May 18, 1995, SWBT withdrew its request for confidential treatment of the cost support, and filed its cost support for this transmittal on the public record. Since SWBT is now following the rules outlined by the Commission and the Communications Act, MCI hereby withdraws its petition to reject or, alternatively, to suspend and investigate SWBT Transmittal No. 2448.

Yours truly,

Don Sussman  
Regulatory Analyst

cc: Geraldine Matise  
David Nall  
Rocky Hudson  
Thomas A. Pajda  
Robert M. Lynch  
Richard C. Hartgrove



STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on November 13, 1995.

A handwritten signature in black ink, appearing to read 'Don Sussman', written over a horizontal line.

Don Sussman  
1801 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
(202) 887-2779

## **CERTIFICATE OF SERVICE**

**I, Stan Miller, do hereby certify that copies of the foregoing Opposition to Direct Case were sent via first class mail, postage paid, to the following on this 13th day of November.**

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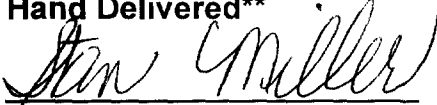
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**Hand Delivered\*\***

A handwritten signature in cursive script that reads "Stan Miller". The signature is written in dark ink and is positioned above a horizontal line.

Stan Miller